

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

<b>SALMONID CONSOLIDATED CASES</b>	<b>1:09-CV-01053 LJO DLB</b>
<b>SAN LUIS &amp; DELTA-MENDOTA WATER AUTHORITY, <i>et al.</i> v. LOCKE, <i>et al.</i></b>	<b>FINAL JUDGMENT (INCLUDING SCHEDULE FOR REMAND)</b>
<b>STOCKTON EAST WATER DISTRICT, <i>et al.</i> v. NOAA, <i>et al.</i></b>	
<b>STATE WATER CONTRACTORS v. LOCKE, <i>et al.</i></b>	
<b>KERN COUNTY WATER AGENCY, <i>et al.</i> v. UNITED STATES DEPARTMENT OF COMMERCE, <i>et al.</i></b>	
<b>OAKDALE IRRIGATION DISTRICT, <i>et al.</i> v. UNITED STATES DEPARTMENT OF COMMERCE, <i>et al.</i></b>	
<b>METROPOLITAN WATER DISTRICT OF CALIFORNIA v. NATIONAL MARINE FISHERIES SERVICE, <i>et al.</i></b>	

As all claims in these consolidated cases have been decided, Judgment is entered in accordance with the following Memoranda and Orders:

(1) The March 5, 2010 *Memorandum Decision Re Cross-Motions For Summary Judgment On NEPA Issues* (Doc. 266) and March 17, 2010 *Order Granting In Part Motion For Summary Judgment On NEPA Issues* (Doc. 288), granting in part the motion for summary judgment of Plaintiffs San Luis & Delta-Mendota Water Authority and Westlands Water District (“San Luis

1 Plaintiffs”), State Water Contractors (“SWC”), Metropolitan Water District of Southern  
2 California (“MWD”), Kern County Water Agency and Coalition for a Sustainable Delta  
3 (collectively “KCWA”), and Stockton East Water District, Oakdale Irrigation District and South  
4 San Joaquin Irrigation District (“Stanislaus River Plaintiffs”) (collectively, “Plaintiffs”) on their  
5 claims against the United States Bureau of Reclamation (“Reclamation”) and Secretary of the  
6 Interior, Kenneth Lee Salazar, that Reclamation violated the National Environmental Policy Act  
7 (“NEPA”) by failing to perform any NEPA analysis prior to provisionally adopting and  
8 implementing the June 4, 2009, Endangered Species Act (“ESA”) biological opinion issued by  
9 the National Marine Fisheries Service (“NMFS”) regarding the effects of the proposed operations  
10 of the federal Central Valley Project (“CVP”) and the State Water Project (“SWP”) on certain  
11 salmonid and other species and their critical habitat (the “2009 Salmonid BiOp”); and

12 (2) The September 20, 2011 *Memorandum Decision Re Cross Motions For Summary*  
13 *Judgment* (Doc. 633) and September 29, 2011 *Order Re Cross-Motions For Summary Judgment*  
14 (Doc. 643) on the motions and cross-motions for summary judgment brought by: (a) San Luis  
15 Plaintiffs, SWC, MWD, KCWA, and Stanislaus River Plaintiffs; (b) plaintiff-in-intervention the  
16 California Department of Water Resources (“DWR”); (c) Federal Defendants, the United States  
17 Department of Commerce, the National Oceanic and Atmospheric Administration, NMFS, the  
18 United States Department of the Interior, and Reclamation; and (d) Defendant-Intervenors  
19 California Trout, Friends Of The River, Natural Resources Defense Council, Northern California  
20 Council of the Federation of Fly Fishers, Pacific Coast Federation of Fishermen’s  
21 Associations/Institute for Fisheries Resources, Sacramento River Preservation Trust, San  
22 Francisco Baykeeper, The Bay Institute, and the Winnemem Wintu Tribe.

23 IT IS FURTHER ORDERED that:

24 (A) NMFS’s 2009 Salmonid BiOp and Reasonable and Prudent Alternative (“RPA”)  
25 and Reclamation’s December 2009 Provisional Acceptance of the RPA are REMANDED  
26 WITHOUT VACATUR, with the following instructions:

27 //

28 //

- 1) NMFS shall transmit to Reclamation by October 1, 2014,<sup>1</sup> a draft salmonid biological opinion consistent with the requirements of law.
- 2) Six months after transmittal of the draft biological opinion, Reclamation shall issue a draft Environmental Impact Statement (“EIS”), or such other documentation as required.
- 3) Reclamation shall issue a final EIS, or such other documentation as required, by February 1, 2016.
- 4) NMFS shall complete ESA consultation and issue its final salmonid biological opinion by February 1, 2016.
- 5) Reclamation shall issue its Record of Decision by April 29, 2016.<sup>2</sup>

(B) The parties shall meet and confer regarding any request by Plaintiffs, or any of them, and/or DWR for recovery of attorneys’ fees and/or costs. Any motion for recovery of attorneys’ fees and/or costs shall be filed on or before March 1, 2012.

**SO ORDERED**

**Dated: December 12, 2011**

**/s/ Lawrence J. O’Neill**  
**United States District Judge**

---

<sup>1</sup> The Court has accelerated the government’s proposed timetable by approximately six months by advancing the due date for the draft salmonid biological opinion (“draft BiOp”). Although the Court is sensitive to the government’s resource concerns and its desire to develop and apply an appropriate life cycle model, after considering all of the relevant pleadings, the Court concludes that a two year period for development of the draft BiOp, starting from the September 29, 2011 issuance of the Order Re Cross-Motions for Summary Judgment and ending on October 1, 2014, is sufficient for this purpose. The Court believes the government’s proposed schedule, which indicates the life-cycle model will not be available until the Spring of 2014, *see* Doc. 637-2 (table detailing timing of steps in draft BiOp development), is overly conservative and cannot justify additional delays in production of a draft BiOp, particularly in light of the fact that further refinement of the life cycle model may take place, if necessary, after the draft BiOp issues. The Court rejects Plaintiffs’ suggestion that an appropriate life cycle model is currently available for immediate implementation, as the balance of the evidence presented in these consolidated cases suggests otherwise. *See* Doc. 633 at 46-63; *see also Declaration of Maria Rea*, Doc. 637-1, at ¶ 8 & Doc. 637-3 (*Rose et al.* (2011)). Plaintiffs’ request that the remand schedule in this case mirror that in the *Delta Smelt Consolidated Cases* is likewise unreasonable. Not only is the scope of the Salmonid BiOp considerably broader than the Smelt BiOp, the Salmonid cross motions for summary judgment were decided more than nine months after those in the *Delta Smelt Consolidated Cases*.

<sup>2</sup> An April 29, 2016 due date for the issuance of Reclamation’s Record of Decision (“ROD”), as opposed to October 31, 2016 (the last day of the water year), is more conducive to the orderly administration of justice should judicial review of the final salmonid BiOp, EIS, and/or ROD be necessary.